

EXHIBIT 5

CAUSE NO.: C-1744-19-A

ELMA IRMA MORENO

IN THE _____ JUDICIAL DISTRICT

VS.

COURT OF

PAG MCALLEN T1, LLC

HIDALGO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES ELMA IRMA MORENO, hereinafter referred to as Plaintiff, and files this her Original Petition against PAG MCALLEN T1, LLC, hereinafter referred to as Defendant, and for cause of action will show the Court the following:

DISCOVERY CONTROL PLAN - BY RULE (LEVEL 3)

1. Plaintiff intends to conduct discovery under Level 3 as provided by Rule 190 of the Texas Rules of Civil Procedure.

CLAIM FOR RELIEF

2. Plaintiff is seeking monetary relief from Defendant in an amount that is more than \$200,000.00, but less than \$1,000,000.00.

PARTIES

3. Plaintiff Elma Irma Moreno is an individual who resides in McAllen, Hidalgo County, Texas.

4. Defendant PAG McAllen T1, LLC is a limited liability company that owns, operates, and does business as a car dealership by the name of Frank Smith Toyota in Pharr, Hidalgo County, Texas. Defendant PAG McAllen T1, LLC, may be served with process by serving its registered agent, C T Corporation System, at 1999 Bryan Street, Suite 900 Dallas, Texas 75201-3136.

5/29/19

DATE 5/29/19
A true copy I certify
LAURA JINOJOSA
District Clerk, Hidalgo County, Texas
By _____ Deputy #1

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VENUE AND JURISDICTION

5. The incident described hereinbelow or events giving rise to Plaintiff's claim against Defendant arose in Pharr, Hidalgo County, Texas. Venue for this cause of action therefore lies in Hidalgo County, Texas.

6. The damages that Plaintiff is seeking from Defendant are within the jurisdictional limits of the Court. This Court therefore has jurisdiction of this cause of action.

FACTS

7. On April 21, 2018, at approximately 9:10 a.m., Plaintiff was at Defendant's Toyota Dealership located in Pharr, Hidalgo County, Texas, for business purposes. While she was inside the dealership, Plaintiff tripped, fell to the floor, and suffered injuries and damages. Defendant had positioned electrical cords on the floor in a high traffic area, walkway, and/or hallway in the dealership. Defendant failed to cover the electrical cords with tape, place warning cones on the cords, place a rubber or plastic cover on the cords, and unplug and remove the cords from the floor to prevent the cords from posing a tripping hazard to customers on the dealership premises. The exposed electrical cords on the floor caused Plaintiff to trip, fall to the floor, and suffer injuries and damages. Defendant created the dangerous condition on the dealership premises that caused Plaintiff to trip and fall (placing the exposed cords on the floor), knowledge of the dangerous condition is therefore imputed on Defendant under Texas Premises Liability Law. After Plaintiff tripped and fell, Defendant placed a large advertising sign in front of the exposed chords that were on the floor to prevent other customers from tripping on the chords and falling.

Plaintiff suffered a low back injury as a result of tripping and falling at the dealership. Plaintiff underwent a laminectomy, discectomy, and fusion to her lumbar spine. The injury to Plaintiff's low back and the surgical procedure caused Plaintiff to suffer a great deal of pain.

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Plaintiff's doctors prescribed morphine to Plaintiff for the pain. As a result of Plaintiff taking the morphine, she suffered injury and/or damage to several of her teeth. Plaintiff was forced to undergo crown procedures to several of her teeth, and is need of several more crown procedures.

CAUSE OF ACTION BASED ON
PREMISES LIABILITY LAW AND PROXIMATE CAUSE

8. At all time that is material to the incident described hereinabove and this case, Defendant was negligent under premises liability law in that:

- A. Plaintiff was a business invitee,
- B. Defendant owned, possessed, and/or controlled the premises where the incident described hereinabove occurred,
- C. A condition on the premises, the exposed electrical cords on the floor, as described in the preceding paragraph, posed an unreasonable risk of harm,
- D. Defendant knew or reasonably should have known of the danger posed by the condition, and
- E. Defendant breached its duty of ordinary care by failing to adequately warn Plaintiff of the condition and failing to make the condition reasonably safe.

This negligence by Defendant was the sole proximate cause or a proximate cause of the incident described hereinabove and the injuries and damages suffered by Plaintiff, as set out hereinbelow.

DAMAGES

9. As a proximate cause of the negligence of Defendant in causing the incident described hereinabove, Plaintiff suffered injuries, suffered physical pain and mental anguish in the past, will suffer physical pain and mental anguish in the future, suffered physical impairment in the past, will suffer physical impairment in the future, suffered physical disfigurement in the past, will suffer physical disfigurement in the future, incurred medical expenses in the past, and will

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incur medical expenses in the future. Plaintiff is seeking monetary relief from Defendant in an amount that is more \$200,000.00, but less than \$1,000,000.00, as compensation for her damages.

VICARIOUS LIABILITY

10. At all time that is material to the incident described hereinabove and this case, Defendant's employees and/or agents acted within the course, scope, and authority of their employment and/or agency relationship with Defendant. Defendant should therefore be held vicariously liable to Plaintiff for all of Plaintiff's damages alleged herein.

PREJUDGMENT AND POSTJUDGMENT INTEREST

11. Plaintiff further sues Defendant herein for prejudgment interest at the maximum rate allowed by law on those damages where such interest may be assessed and for postjudgment interest at the maximum rate allowed by law on all of Plaintiff's damages from the date of judgment until the judgment is paid in full.

REQUEST FOR JURY AND JURY FEE

12. Plaintiff requests that the above-styled and numbered cause be tried to a jury and represents to the Court that the proper jury fee has been paid to the Clerk of this Court with the filing of Plaintiff's Original Petition.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final hearing, she have judgment against Defendant for all of her damages hereinabove alleged, for prejudgment and postjudgment interest, and for any and all other relief, both general and special, in law and in equity, and for all costs of Court in her behalf expended.

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Respectfully Submitted,

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